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No. 93-241

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1993

Ruth Jaffe,

Petitioner,

v.

Hardy M. Snow, Jr. and Accredited Surety & Casualty Company, Inc.,

Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal of the State of Florida, Fifth District

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF THE GOVERNMENT OF CANADA AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

The Government of Canada hereby moves for leave to file a brief as *amicus curiae* in support of Petitioner Ruth Jaffe pursuant to Sup. Ct. R. 37.2. The consent of Petitioner Ruth Jaffe has been filed with this Court. Remarkably, Respondents, Hardy M. Snow, Jr. and Accredited Surety & Casualty Company, Inc., have refused their consent to the filing of this *amicus curiae* brief. Attached as Exhibit A is the Government of Canada's letter to Respondents and Respondents' response "vehemently object[ing]" to the filing of this brief.

As this Court is aware, it was the Clerk of this Court who first requested the U.S. Department of State to inform foreign governments that they should make their views known to the Court by filing amicus briefs. In a diplomatic circular to the U.S. Chiefs of Mission, dated August 17, 1978, the U.S. Department of State specifically stated:

> The United States will consent to such a[n amicus] filing in any case in which it is a party. *In the unlikely event that any other party should decline to consent, the Supreme Court will almost certainly grant the motion of a foreign government for leave to file a brief.*[1]

Respondents' refusal to consent to permit the Government of Canada's views lacks any justification. The Government of Canada respectfully requests permission to file this brief so that the Court can have the benefit of Canada's views on important international issues as to which Canada is in a strong position to comment.

INTEREST OF THE AMICUS CURIAE

The Government of Canada is filing this brief in support of the Petition for Writ of Certiorari because important policies of Canada and the United States in deterring transborder kidnapping are implicated. Although the judgment below was purportedly based on the public policy of Florida, the transborder kidnapping in Canada at issue in this case constituted both a breach of Canada's criminal law and a breach of international law. The Government of Canada submits that the court below failed to consider the public policy of the United States as evidenced in the January 11, 1988 Exchange of Letters Constituting an Understanding Between the Government of Canada and the Government of the United States of America Concerning the Protocol Amending the Treaty on Extradition, as well as the principles of international comity.

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1. *Reprinted in*, 73 Am. J. Int'l. L. 124 (emphasis supplied).

STATEMENT OF FACTS

Ruth Jaffe sued the Respondents in the Supreme Court of Ontario, seeking damages in connection with expenses incurred following the wrongful abduction of Sidney Jaffe from Canada to the United States by United States bounty hunters hired by the Respondents. On November 22, 1990, the Supreme Court of Ontario found in favor of Mrs. Jaffe and awarded her money judgment.

Mrs. Jaffe then brought an action in the Ninth Judicial Circuit in and for Orange County, Florida, seeking recognition and enforcement of the judgment rendered by the Supreme Court of Ontario. The court entered summary judgment in favor of the Respondents.

Mrs. Jaffe appealed that ruling to the District Court of Appeal of the State of Florida, Fifth District, which affirmed the Circuit Court's judgment on November 13, 1992.[2] A rehearing was denied on January 12, 1993. A motion to invoke the jurisdiction of the Supreme Court of Florida was denied on May 10, 1993.

Mrs. Jaffe petitioned this Court for a writ of certiorari to the District Court of Appeal of the State of Florida, Fifth District on August 9, 1993.

SUMMARY OF ARGUMENT

The Government of Canada submits that in determining public policy, for the purposes of recognizing and enforcing foreign judgments, United States courts should have regard to international agreements and principles of international comity, which constitute the public policy of the United States. The United States Government has undertaken in an Exchange of Letters with the Canadian Government to cooperate to deter transborder kidnapping.[3] The District Court

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2. *Jaffe v. Snow*, 610 So. 2d 482 (Fla. Dist. Ct. App. 1992).

3. The January 11, 1988 Exchange of Letters Constituting an Understanding Between the Government of Canada and the Government of the United States of America Concerning the Protocol Amending the Treaty on Extradition states: ". . . Canada and the United States agree to cooperate

of Appeal of the State of Florida, Fifth District erred in failing to take this into account.

ARGUMENT

I. THE TRANSBORDER KIDNAPPING CONSTITUTED AN INFRINGEMENT OF CANADIAN TERRITORIAL SOVEREIGNTY AND WAS CONTRARY TO THE CANADA-UNITED STATES EXTRADITION TREATY, THE SUBSEQUENT CANADA-UNITED STATES LETTER OF UNDERSTANDING ON TRANSBORDER KIDNAPPING, AND INTERNATIONAL LAW

The Government of Canada's participation is based in part on the United States' position on the issue of transborder bounty hunting and the reliance Canada may place on the undertakings of the United States Government to deter such activities and to exert its best efforts to inform those engaged in transborder bounty hunting that such activities are illegal and that offenders will be subject to extradition. It is also grounded in concerns about the effective implementation of the Canada-United States Extradition Treaty.

The abduction of Sidney Jaffe from his home in Toronto, Canada to Florida by U.S. bounty hunters hired by the Respondents was a blatant infringement of Canadian territorial sovereignty and was contrary to the Canada-United States Extradition Treaty and international law.

Transborder bounty hunting has been condemned by the international community. It is the criminal offence of kidnapping in Canada, the United States and Florida; kidnapping is an extraditable offence in both countries.[4] The Canadian Government filed formal protests with the United States Government objecting to the abduction and demanding Mr.

NOTES *(Continued)*

to deter such transborder abductions . . .". (27 I.L.M. 422 (1988), Appendix B.)

4. See Extradition Treaty Between the United States of America and Canada, 27 U.S.T. 983 (1976), Appendix A-40, Petitioner's Brief and Protocol Amending the Treaty Between Canada and the United States of America, 27 I.L.M. 422 (1988), Appendix A-42, Petitioner's Brief.

Jaffe's release. The United States Department of Justice and the United States State Department condemned the abduction of Mr. Jaffe from Canada as a violation of United States public policy.

The gravity of the incident was recognized by United States Secretary of State George Shultz in the following words:

> . . . it is perfectly understandable that the Government of Canada is outraged by his alleged kidnapping, which Canada considers a violation of the treaty and of international law, as well as an affront to its sovereignty.[5]

Secretary of State Shultz recognized the serious effect of the kidnapping on Canada-United States relations. He said:

> . . . the Jaffe case threatens to have a generally deleterious effect on our relations with Canada.[6]

And he stated the public policy of the United States in this matter as follows:

> It is simply in the national interest that this case no longer be permitted to intrude upon our relations with one of our most important and highly valued neighbors . . .[7]

Canada sought extradition of the bounty hunters. The United States Government refused to excuse or exonerate the bounty hunters and extradited them to Canada where they were tried and convicted.[8] Extradition to Canada from Florida was not denied by the United States Government or the Florida Courts because of any activities that may have been undertaken by Mr. Jaffe in Florida. The bounty hunters hired

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5. Statement of George P. Shultz, Secretary of State, before the State of Florida Probation and Parole Commission In re: Sidney Leonard Jaffe, 2-3 (June 22, 1983) (attached as Appendix C).

6. *Id.*

7. *Id.*

8. *Kear v. Hilton*, 699 F.2d 181, 185 (4th Cir. 1983); *Johnson v. Kear*, (Ont. H.C. June 9, 1986), *aff'd*, 5 C.C.C. (3d) 574 (Ont. C.A. 1989).

by the Respondents were convicted; no justification for their actions could be found by the court in any activities carried out by Mr. Jaffe in Florida.

The policy of the United States Government concerning transborder bounty hunting is demonstrated in the January 11, 1988 Exchange of Letters Constituting an Understanding Between the Government of Canada and the Government of the United States of America Concerning the Protocol Amending the Treaty on Extradition (the "Canada-United States Letter of Understanding").[9] The Canada-United States Letter of Understanding, signed by the United States Secretary of State and the Canadian Secretary of State for External Affairs, reads in part as follows:

> The United States and Canada recognize that the transborder abduction of persons found in Canada to the United States of America by civilian agents of bail-bonding companies . . . is an extraditable offense under the United States-Canada Extradition Treaty.

Both countries agreed to take action against transborder bounty hunting:

> . . . Canada and the United States agree to cooperate to deter such transborder abductions . . .

Of particular relevance in the petition is the undertaking made in the letter by the United States to Canada, which reads as follows:

> [T]he United States will continue to exert its best efforts to inform those engaged in business as bail-bondsmen or bounty hunters . . . of the positions set forth in this exchange of letters.

This policy applies to persons found in Canada irrespective of citizenship.

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9. *Supra*, note 3 (Appendix B).

II. THE FLORIDA COURT'S DECISION FAILED TO ACCORD PROPER WEIGHT TO THE KIDNAPPING'S VIOLATION OF INTERNATIONAL AGREEMENTS AND INTERNATIONAL COMITY.

Florida did not petition the United States government to request Mr. Jaffe's extradition, and Canada did not refuse a request for Mr. Jaffe's extradition. This is not a case where the extradition process was tried and failed. There was no justification for extraordinary measures to be taken; Florida has used the Treaty successfully before and since the Jaffe instance to obtain the return of fugitives. The Court of Appeal failed to give effect to the Letter of Understanding and the Extradition Treaty.

Canada has a right to rely on the undertaking set out in the Canada-United States Letter of Understanding. The judgement of the Florida Court of Appeals failed to take into account the undertakings of the United States Government. The Canada-United States Letter of Understanding should be respected and given consideration by United States courts in the determination of public policy as it relates to the question of recognizing and enforcing the judgment of the Supreme Court of Ontario.

CONCLUSION

In reaching its decision, the Florida Court of Appeal failed to consider the public policy of the United States concerning transborder kidnapping. This is an important issue of national and international public policy which should be considered. Accordingly, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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September 8, 1993

APPENDIX

APPENDIX A

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September 1, 1993

BY FACSIMILE AND MAIL

Sharon Lee Stedman, Esq.
1516 E. Hillcrest Street
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Orlando, FL 32803

Re: *Ruth Jaffe v. Hardy M. Snow, Jr. & Accredited Surety & Casualty Company, Inc., No. 93-241*

Dear Ms. Stedman:

We are writing you on behalf of the Government of Canada to request the consent of Respondents, Hardy M. Snow, Jr. and Accredited Surety & Casualty Company, Inc., to the filing by the Government of Canada of an *amicus curiae* brief in support of the petition for writ of certiorari in the above referenced case. In view of the very tight filing deadline we would appreciate your sending us the consent in writing by facsimile and courier within the next 48 hours.

We have been advised that your clients may not consent to the Government of Canada's amicus brief. If your clients do not wish to consent, would you please advise us of their reasons for not consenting.

Thank you for your cooperation.

Sincerely,

/s/ Douglas E. Rosenthal
Kay C. Georgi

Douglas E. Rosenthal
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APPENDIX A (Cont'd)

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September 2, 1993

Via Fax No. 202-775-1168

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Re: *Ruth Jaffe v. Hardy M. Snow, Jr. and Accredited Surety & Casualty Company, Inc.* No. 93-241

Dear Mr. Rosenthal and Ms. Georgi:

This is to acknowledge your facsimile to me of September 1, 1993, requesting the respondents' consent to the filing of an *amicus curiae* brief in support of the petition for writ of certiorari by the Government of Canada in the above-referenced case. Please be advised that the respondents vehemently object to this filing. In addition, I believe that the time has expired for any such filing.

Please let me know if I can be of any further assistance.

Sincerely yours,

/s/ Sharon Lee Stedman

SLS/msw

APPENDIX A (Cont'd)

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Re: *Ruth Jaffe v. Hardy M. Snow, Jr. and Accredited Surety & Casualty Company, Inc.* No. 93-241

Dear Mr. Rosenthal and Ms. Georgi:

Subsequent to my letter and facsimile to you of September 2, 1993, I have learned that the filing of an *amicus curiae* brief can be filed with the response in opposition to the petition for writ of certiorari, contrary to my understanding that it had to be filed at the time that the petition for writ of certiorari was filed. Nevertheless, the respondents still vehemently object to any such filing.

Sincerely yours,

/s/ Sharon Lee Stedman

SLS/msw

APPENDIX B

Letter of Secretary Shultz, January 11, 1988

THE SECRETARY OF STATE
WASHINGTON

January 11, 1988

Dear Mr. Minister:

I refer to the Protocol Amending the Treaty on Extradition between the United States and Canada we signed today and have the honor to address to you the following.

The United States and Canada recognize that the transborder abduction of persons found in Canada to the United States of America by civilian agents of bail bonding companies, so-called "bounty hunters", is an extraditable offense under the United States – Canada Extradition Treaty.

Where a person has been charged with or convicted of such an offense in Canada and is found within the jurisdiction of the United States, the United States agrees, upon request, to commence extradition proceedings against such a person pursuant to the Treaty in order that the person may be returned to Canada.

The United States will use its best efforts to honor Canadian requests for testimony, information, or other assistance pertaining to such abductions.

Canada and the United States agree to cooperate to deter such transborder abductions. To assist in achieving that purpose, the United States will continue to exert its best efforts to inform those engaged in business as bail bondsmen or bounty hunters and other interested parties of the positions set forth in this exchange of letters.

Canada and the United States agree to consult promptly concerning any case of transborder abduction involving bounty hunters which might arise in the future. The purpose of such consultation shall be to address matters relating to any such case, including any request by the Government of Canada for the return of the person so abducted. In the event of return, the Governments agree to co-operate to have the

abducted person escorted to Canada and taken into custody at the border, pursuant to a request for provisional arrest, pending the outcome of extradition proceedings. For the purpose of these consultations, the principal law enforcement contact for the United States will be the Director of the Office of International Affairs of the Criminal Division of the Department of Justice.

The Right Honorable
Joe Clark, P.C., M.P.,
Secretary of State
For External Affairs of Canada,
Ottawa.

I have the honor to propose that this letter and your reply constitute an understanding between our two Governments which is not intended to create or otherwise alter legal obligations for either Government nor to create or otherwise alter any rights or privileges for private parties.

Sincerely yours,

/s/ George P. Shultz
George P. Shultz

APPENDIX B (Cont'd)

Letter of Secretary Clark, January 11, 1988

THE RT. HON. JOE CLARK, P.C., M.P.
SECRETARY OF STATE FOR EXTERNAL AFFAIRS

CANADA

Ottawa, January 11, 1988

JLA-0026

Dear Mr. Secretary:

I have the honour to acknowledge receipt of your letter of today's date concerning transborder abduction of persons found in Canada to the United States of America by civilian agents of bail bonding companies, so-called "bounty hunters". I accept your proposal that your letter and this reply constitute an Understanding between our two Governments which is not intended to create or otherwise alter legal obligations for either Government nor to create or otherwise alter any rights or privileges for private parties.

Yours sincerely,

/s/ Joe Clark

The Honorable George P. Shultz
Secretary of State of the
United States of America

APPENDIX C

Statement of Secretary Shultz, June 22, 1983

STATE OF FLORIDA

PROBATION AND PAROLE COMMISSION

IN RE: SIDNEY LEONARD JAFFE
INMATE #082007

STATEMENT OF GEORGE P. SHULTZ, SECRETARY OF STATE

I urge you to grant parole to Sidney Jaffe on the ground that his continued incarceration will exacerbate the already severe strain placed on the relations of the United States with Canada arising out of circumstances under which Mr. Jaffe was returned from Canada to Florida to face the charges which resulted in his imprisonment.

The circumstances of Mr. Jaffe's return from Canada to Florida were examined in the opinions of the United States Court of Appeals for the Fourth Circuit and the United States District Court for the Middle District of Florida in the cases of Daniel Kear and Timm Johnsen, respectively. In brief, the courts found that Kear and Johnsen were extraditable to Canada, a showing having been made of probable cause to believe that the two "bounty hunters," who were acting as agents of the company that had posted bond for Mr. Jaffe, had kidnapped Jaffe in Toronto, Canada and had brought him back to Florida.

The United States has an extradition treaty with Canada. That treaty could have been utilized to secure Mr. Jaffe's return; no one has suggested the contrary. How, then, did it happen that Mr. Jaffe was returned by Kear and Johnsen?

Canada, in a petition for writ of habeas corpus filed in the United States District Court for the Middle District of Florida, alleges that Kear and Johnsen were "acting pursuant to a plan promoted by officials of the State of Florida and under the color of authority of the State of Florida." The officials of the State of Florida whose conduct has been called into question by Canada deny the charges, I understand, and I do not now take any position on the question whether there was state action or involvement in the alleged kidnapping of Mr. Jaffe.

However, failure to utilize our extradition treaty with Canada to secure Mr. Jaffe's return does appear to be attributable to the Office of State Attorney Stephen L. Boyles, according to the report to Governor Graham prepared by the Governor's General Counsel. On May 18, 1981, when Mr. Jaffe failed to appear, Judge Perry ordered the State Attorney to initiate extradition proceedings. Any request for Mr. Jaffe's extradition would have been made by the Governor on the basis of supporting materials prepared by the State Attorney's office. Documents submitted by the State Attorney's office were found by the Governor's office to be legally insufficient to support a request for Mr. Jaffe's extradition on July 2, and again on July 23, 1981. Mr. Jaffe was returned from Canada under the circumstances of which Canada complains on September 24, 1981. In the intervening two months the State Attorney's Office failed to make any further effort to submit legally sufficient documentation to the Governor's office in support of a request for Mr. Jaffe's extradition.

As no good reason appears why the extradition treaty was not utilized to secure Mr. Jaffe's return, it is perfectly understandable that the Government of Canada is outraged by his alleged kidnapping, which Canada considers a violation of the treaty and of international law, as well as an affront to its sovereignty.

I wish to emphasize that Canada is our most important extradition treaty partner and that the maintenance of the excellent extradition relationship we have had with Canada is greatly in the law enforcement interest of Florida and the other states, as well as of the federal government. Indeed, in the last three full calendar years, sixty per cent of the fugitives surrendered to the United States pursuant to extradition

requests made by states, as opposed to the federal government, were surrendered by Canada.

Moreover, quite apart from law enforcement cooperation, the Jaffe case threatens to have a generally deleterious effect on our relationships with Canada. Canadian authorities have raised this matter in virtually every recent high level contact between our two nations. It is simply in the national interest that this case no longer be permitted to intrude upon our relations with one of our most important and highly valued neighbors, allies and trading partners.

For the foregoing reasons, I urge you to grant parole to Sidney Jaffe.

/s/ George P. Shultz
GEORGE P. SHULTZ
Secretary of State

July 22, 1983
Date